



Senate

General Assembly

File No. 494

February Session, 2006

Substitute Senate Bill No. 547

Senate, April 12, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT AND THE CONNECTICUT REVISED NONSTOCK CORPORATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-602 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 As used in sections 33-600 to 33-998, inclusive, and sections 2 and 15
4 of this act:

5 (1) "Address" means location as described by the full street number,
6 if any, street, city or town, state or country and not a mailing address
7 such as a post office box.

8 (2) "Authorized shares" means the shares of all classes a domestic or
9 foreign corporation is authorized to issue.

10 (3) "Certificate of incorporation" means the original certificate of
11 incorporation or restated certificate of incorporation, and all

12 amendments thereto, and all certificates of merger or consolidation. In
13 the case of a specially chartered corporation, "certificate of
14 incorporation" means the special charter of the corporation, including
15 any portions of the charters of its predecessor companies which have
16 continuing effect, and any amendments to the charter made by special
17 act or pursuant to general law. In the case of a corporation formed
18 before January 1, 1961, or of a specially chartered corporation,
19 "certificate of incorporation" includes those portions of any other
20 corporate instruments or resolutions of current application in which
21 are set out provisions of the sort which either (A) are required by
22 sections 33-600 to 33-998, inclusive, to be embodied in the certificate of
23 incorporation, or (B) are expressly permitted by sections 33-600 to 33-
24 998, inclusive, to be operative only if included in the certificate of
25 incorporation. It also includes what were, prior to January 1, 1961,
26 designated at law as agreements of association, articles of
27 incorporation, charters and other such terms.

28 (4) "Conspicuous" means so written that a reasonable person against
29 whom the writing is to operate should have noticed it. For example,
30 printing in italics or boldface or contrasting color, or typing in capitals
31 or underlined, is conspicuous.

32 (5) "Corporation" or "domestic corporation" means a corporation
33 with capital stock, which is not a foreign corporation, incorporated
34 under the laws of this state, whether general law or special act and
35 whether before or after January 1, 1997.

36 (6) "Deliver" or "delivery" means any method of delivery used in
37 conventional commercial practice including delivery by hand, mail,
38 commercial delivery and electronic transmission.

39 (7) "Distribution" means a direct or indirect transfer of money or
40 other property, except its own shares, or incurrence of indebtedness by
41 a corporation to or for the benefit of its shareholders in respect of any
42 of its shares. A distribution may be in the form of a declaration or
43 payment of a dividend; a purchase, redemption or other acquisition of
44 shares; a distribution of indebtedness; or otherwise.

45 (8) "Document" includes anything delivered to the office of the
46 Secretary of the State for filing under sections 33-600 to 33-998,
47 inclusive.

48 (9) "Effective date of notice" is defined in section 33-603.

49 (10) "Electronic transmission" or "electronically transmitted" means
50 any process of communication not directly involving the physical
51 transfer of paper that is suitable for the retention, retrieval and
52 reproduction of information by the recipient.

53 (11) "Employee" includes an officer but not a director. A director
54 may accept duties that make him also an employee.

55 (12) "Entity" includes a corporation and foreign corporation;
56 nonprofit corporation; profit and nonprofit unincorporated
57 association; business trust, estate, partnership, limited liability
58 company, trust and two or more persons having a joint or common
59 economic interest; and state, United States or foreign government.

60 (13) "Facts objectively ascertainable" outside of a plan or filed
61 document is defined in subsection (l) of section 33-608.

62 (14) "Foreign corporation" means a corporation incorporated under
63 a law other than the law of this state.

64 (15) "Governmental subdivision" includes authority, county, district
65 and municipality.

66 (16) "Includes" denotes a partial definition.

67 (17) "Individual" includes the estate of an incompetent or deceased
68 individual.

69 (18) "Means" denotes an exhaustive definition.

70 (19) "Notice" is defined in section 33-603.

71 (20) "Person" includes individual and entity.

72 (21) "Principal office" of a domestic corporation means the address
73 of the principal office of such corporation in this state, if any, as the
74 same appears in the last annual report, if any, filed by such corporation
75 with the Secretary of the State. If no principal office so appears, the
76 corporation's "principal office" means the address in this state of the
77 corporation's registered agent for service as last shown on the records
78 of the Secretary of the State. In the case of a domestic corporation
79 which has not filed such an annual report or appointment of registered
80 agent for service, the "principal office" means the address of the
81 principal place of business of such corporation in this state, if any, and
82 if such corporation has no place of business in this state, its "principal
83 office" shall be the office of the Secretary of the State.

84 (22) "Proceeding" includes civil suit and criminal, administrative
85 and investigatory action.

86 (23) "Public corporation" means a corporation that has shares listed
87 on a national securities exchange or regularly traded in a market
88 maintained by one or more members of a national or affiliated
89 securities association.

90 (24) "Qualified director" is defined in section 2 of this act.

91 [(23)] (25) "Record date" means the date established under sections
92 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, on
93 which a corporation determines the identity of its shareholders and
94 their shareholdings for purposes of sections 33-600 to 33-998, inclusive.
95 The determinations shall be made as of the close of business on the
96 record date unless another time for doing so is specified when the
97 record date is fixed.

98 [(24)] (26) "Secretary" means the corporate officer to whom under
99 the bylaws or by the board of directors is delegated responsibility
100 under subsection (c) of section 33-763 for custody of the minutes of the
101 meetings of the board of directors and of the shareholders and for
102 authenticating records of the corporation.

103 [(25)] (27) "Secretary of the State" means the Secretary of the State of
104 Connecticut.

105 [(26)] (28) "Shares" means the units into which the proprietary
106 interests in a corporation are divided.

107 [(27)] (29) "Shareholder" means the person in whose name shares are
108 registered in the records of a corporation or the beneficial owner of
109 shares to the extent of the rights granted by a nominee certificate on
110 file with a corporation.

111 [(28)] (30) "Sign" or "signature" includes any manual, facsimile,
112 conformed or electronic signature.

113 [(29)] (31) "State", when referring to a part of the United States,
114 includes a state and commonwealth, and their agencies and
115 governmental subdivisions, and a territory and insular possession, and
116 their agencies and governmental subdivisions, of the United States.

117 [(30)] (32) "Subscriber" means a person who subscribes for shares in
118 a corporation, whether before or after incorporation.

119 [(31)] (33) "United States" includes any district, authority, bureau,
120 commission, department and other agency of the United States.

121 [(32)] (34) "Voting group" means all shares of one or more classes or
122 series that under the certificate of incorporation or sections 33-600 to
123 33-998, inclusive, are entitled to vote and be counted together
124 collectively on a matter at a meeting of shareholders. All shares
125 entitled by the certificate of incorporation or said sections to vote
126 generally on the matter are for that purpose a single voting group.

127 [(33)] (35) "Voting power" means the current power to vote in the
128 election of directors.

129 Sec. 2. (NEW) (*Effective October 1, 2006*) (a) For purposes of sections
130 33-600 to 33-998, inclusive, of the general statutes and section 15 of this
131 act, a qualified director is a director who, at the time action is to be

132 taken under:

133 (1) Section 33-724 of the general statutes, as amended by this act,
134 does not have (A) a material interest in the outcome of the proceeding,
135 or (B) a material relationship with a person who has such an interest;

136 (2) Section 33-773 or 33-775 of the general statutes, as amended by
137 this act, (A) is not a party to the proceeding, (B) is not a director who
138 sought approval for a director's conflicting interest transaction under
139 section 33-783 of the general statutes, as amended by this act, or a
140 disclaimer of the corporation's interest in a business opportunity under
141 section 15 of this act, which approval or disclaimer is challenged in the
142 proceeding, and (C) does not have a material relationship with a
143 director described in either subparagraph (A) or (B) of this
144 subdivision;

145 (3) Section 33-783 of the general statutes, as amended by this act, is
146 not a director (A) as to whom the transaction is a director's conflicting
147 interest transaction, or (B) who has a material relationship with
148 another director as to whom the transaction is a director's conflicting
149 interest transaction; or

150 (4) Section 15 of this act, would be a qualified director under
151 subdivision (3) of this subsection if the business opportunity were a
152 director's conflicting interest transaction.

153 (b) For purposes of this section:

154 (1) "Material relationship" means a familial, financial, professional
155 or employment relationship that would reasonably be expected to
156 impair the objectivity of the director's judgment when participating in
157 the action to be taken; and

158 (2) "Material interest" means an actual or potential benefit or
159 detriment, other than one which would devolve on the corporation or
160 the shareholders generally, that would reasonably be expected to
161 impair the objectivity of the director's judgment when participating in
162 the action to be taken.

163 (c) The presence of one or more of the following circumstances shall
164 not by itself prevent a director from being a qualified director:

165 (1) Nomination or election of the director to the current board by
166 any director who is not a qualified director with respect to the matter,
167 or by any person that has a material relationship with that director,
168 acting alone or participating with others;

169 (2) Service as a director of another corporation of which a director
170 who is not a qualified director with respect to the matter, or any
171 individual who has a material relationship with that director, is also a
172 director; or

173 (3) With respect to action to be taken under section 33-724 of the
174 general statutes, as amended by this act, status as a named defendant,
175 as a director against whom action is demanded or as a director who
176 approved the conduct being challenged.

177 Sec. 3. Subsection (d) of section 33-717 of the general statutes is
178 repealed and the following is substituted in lieu thereof (*Effective*
179 *October 1, 2006*):

180 (d) An agreement authorized by this section shall cease to be
181 effective when [shares of the corporation are listed on a national
182 securities exchange or regularly traded in a market maintained by one
183 or more members of a national or affiliated securities association] the
184 corporation becomes a public corporation. If the agreement ceases to
185 be effective for any reason, the board of directors may, if the
186 agreement is contained or referred to in the corporation's certificate of
187 incorporation or bylaws, adopt an amendment to the certificate of
188 incorporation or bylaws, without shareholder action, to delete the
189 agreement and any references to it.

190 Sec. 4. Section 33-724 of the general statutes is repealed and the
191 following is substituted in lieu thereof (*Effective October 1, 2006*):

192 (a) A derivative proceeding shall be dismissed by the court on
193 motion by the corporation if one of the groups specified in subsection

194 (b) or [(f)] (e) of this section has determined in good faith, after
195 conducting a reasonable inquiry upon which its conclusions are based,
196 that the maintenance of the derivative proceeding is not in the best
197 interests of the corporation.

198 (b) Unless a panel is appointed pursuant to subsection [(f)] (e) of this
199 section, the determination in subsection (a) of this section shall be
200 made by:

201 (1) A majority vote of [independent] qualified directors present at a
202 meeting of the board of directors if the [independent] qualified
203 directors constitute a quorum; or

204 (2) [a] A majority vote of a committee consisting of two or more
205 [independent] qualified directors appointed by [a] majority vote of
206 [independent] qualified directors present at a meeting of the board of
207 directors, regardless of whether [or not] such [independent] qualified
208 directors [constituted] constitute a quorum.

209 [(c) None of the following shall by itself cause a director to be
210 considered not independent for purposes of this section: (1) The
211 nomination or election of the director by persons who are defendants
212 in the derivative proceeding or against whom action is demanded; (2)
213 the naming of the director as a defendant in the derivative proceeding
214 or as a person against whom action is demanded; or (3) the approval
215 by the director of the act being challenged in the derivative proceeding
216 or demand if the act resulted in no personal benefit to the director.]

217 [(d)] (c) If a derivative proceeding is commenced after a
218 determination has been made rejecting a demand by a shareholder, the
219 complaint shall allege with particularity facts establishing either (1)
220 that a majority of the board of directors did not consist of
221 [independent] qualified directors at the time the determination was
222 made, or (2) that the requirements of subsection (a) of this section have
223 not been met.

224 [(e)] (d) If a majority of the board of directors [does not consist of

225 independent directors at the time the determination is made, the
226 corporation shall have the burden of proving that the requirements of
227 subsection (a) of this section have been met. If a majority of the board
228 of directors consists of independent directors at the time the
229 determination is] consisted of qualified directors at the time the
230 determination was made, the plaintiff shall have the burden of proving
231 that the requirements of subsection (a) of this section have not been
232 met. If a majority of the board of directors did not consist of qualified
233 directors at the time the determination was made, the corporation shall
234 have the burden of proving that the requirements of subsection (a) of
235 this section have been met.

236 [(f) The] (e) Upon motion by the corporation, the court may appoint
237 a panel of one or more [independent persons upon motion by the
238 corporation] individuals to make a determination whether the
239 maintenance of the derivative proceeding is in the best interests of the
240 corporation. In such case, the plaintiff shall have the burden of proving
241 that the requirements of subsection (a) of this section have not been
242 met.

243 Sec. 5. Section 33-764 of the general statutes is repealed and the
244 following is substituted in lieu thereof (*Effective October 1, 2006*):

245 Each officer has the authority and shall perform the [duties]
246 functions set forth in the bylaws or, to the extent consistent with the
247 bylaws, the [duties] functions prescribed by the board of directors or
248 by direction of an officer authorized by the board of directors to
249 prescribe the [duties] functions of other officers.

250 Sec. 6. Section 33-770 of the general statutes is repealed and the
251 following is substituted in lieu thereof (*Effective October 1, 2006*):

252 As used in sections 33-770 to 33-779, inclusive:

253 (1) "Corporation" includes any domestic or foreign predecessor
254 entity of a corporation in a merger.

255 (2) "Director" or "officer" means an individual who is or was a

256 director or officer, respectively, of a corporation or who, while a
257 director or officer of the corporation, is or was serving at the
258 corporation's request as a director, officer, partner, trustee, employee
259 or agent of another domestic or foreign corporation, partnership, joint
260 venture, trust, employee benefit plan or other entity. A director or
261 officer is considered to be serving an employee benefit plan at the
262 corporation's request if [his] the individual's duties to the corporation
263 also impose duties on, or otherwise involve services by, [him] the
264 individual to the plan or to participants in or beneficiaries of the plan.
265 "Director" or "officer" includes, unless the context requires otherwise,
266 the estate or personal representative of a director or officer.

267 [(3) "Disinterested director" means a director who at the time of a
268 vote referred to in subsection (c) of section 33-773 or a vote or selection
269 referred to in subsection (b) or (c) of section 33-775, is not (A) a party to
270 the proceeding or (B) an individual having a familial, financial,
271 professional or employment relationship with the director whose
272 indemnification or advance for expenses is the subject of the decision
273 being made, which relationship would, in the circumstances,
274 reasonably be expected to exert an influence on the director's judgment
275 when voting on the decision being made.]

276 [(4)] (3) "Expenses" include counsel fees.

277 [(5)] (4) "Liability" means the obligation to pay a judgment,
278 settlement, penalty, fine, including an excise tax assessed with respect
279 to an employee benefit plan, or reasonable expenses incurred with
280 respect to a proceeding.

281 [(6)] (5) "Official capacity" means: (A) When used with respect to a
282 director, the office of director in a corporation; and (B) when used with
283 respect to an [individual other than a director] officer, as contemplated
284 in section 33-776, the office in a corporation held by the officer. [or the
285 employment or agency relationship undertaken by the employee or
286 agent on behalf of the corporation.] "Official capacity" does not include
287 service for any other domestic or foreign corporation or any
288 partnership, joint venture, trust, employee benefit plan or other entity.

289 [(7)] (6) "Party" means an individual who was, is, or is threatened to
290 be made, a defendant or respondent in a proceeding.

291 [(8)] (7) "Proceeding" means any threatened, pending or completed
292 action, suit or proceeding, whether civil, criminal, administrative,
293 arbitratative or investigative and whether formal or informal.

294 Sec. 7. Section 33-773 of the general statutes is repealed and the
295 following is substituted in lieu thereof (*Effective October 1, 2006*):

296 (a) A corporation may, before final disposition of a proceeding,
297 advance funds to pay for or reimburse the reasonable expenses
298 incurred [by a director] in connection with the proceeding by an
299 individual who is a party to [a] the proceeding because [he is a director
300 if he] that individual is a member of the board of directors if the
301 director delivers to the corporation:

302 (1) A written affirmation of [his] the director's good faith belief that
303 [he has met] the relevant standard of conduct described in section 33-
304 771 [.] has been met by the director or that the proceeding involves
305 conduct for which liability has been limited under a provision of the
306 certificate of incorporation as authorized by subdivision (4) of
307 subsection (b) of section 33-636, as amended by this act; and

308 (2) [his] A written undertaking to repay any funds advanced if [he]
309 the director is not entitled to mandatory indemnification under section
310 33-772 and it is ultimately determined under section 33-774 or 33-775,
311 as amended by this act, that [he] the director has not met the relevant
312 standard of conduct described in section 33-771.

313 (b) The undertaking required by subdivision (2) of subsection (a) of
314 this section must be an unlimited general obligation of the director but
315 need not be secured and may be accepted without reference to the
316 financial ability of the director to make repayment.

317 (c) Authorizations under this section shall be made:

318 (1) By the board of directors: (A) If there are two or more

319 [disinterested] qualified directors, by a majority vote of all the
320 [disinterested] qualified directors, a majority of whom shall for such
321 purpose constitute a quorum, or by a majority of the members of a
322 committee of two or more [disinterested] qualified directors appointed
323 by such a vote; or (B) if there are fewer than two [disinterested]
324 qualified directors, by the vote necessary for action by the board in
325 accordance with subsection (c) of section 33-752, in which
326 authorization directors who [do not qualify as disinterested] are not
327 qualified directors may participate; or

328 (2) [by] By the shareholders, [provided] but shares owned by or
329 voted under the control of a director who at the time [does not qualify
330 as a disinterested] is not a qualified director may not be voted on the
331 authorization.

332 Sec. 8. Section 33-775 of the general statutes is repealed and the
333 following is substituted in lieu thereof (*Effective October 1, 2006*):

334 (a) A corporation may not indemnify a director under section 33-771
335 unless authorized for a specific proceeding after a determination has
336 been made that indemnification [of the director] is permissible because
337 [he] the director has met the relevant standard of conduct set forth in
338 said section.

339 (b) The determination shall be made:

340 (1) If there are two or more [disinterested] qualified directors, by the
341 board of directors by a majority vote of all the [disinterested] qualified
342 directors, a majority of whom shall for such purpose constitute a
343 quorum, or by a majority of the members of a committee of two or
344 more [disinterested] qualified directors appointed by such a vote;

345 (2) By special legal counsel (A) selected in the manner prescribed in
346 subdivision (1) of this subsection, or (B) if there are fewer than two
347 [disinterested] qualified directors, selected by the board of directors, in
348 which selection directors who [do not qualify as disinterested] are not
349 qualified directors may participate; or

350 (3) By the shareholders, but shares owned by or voted under the
351 control of a director who at the time [does not qualify as a
352 disinterested] is not a qualified director may not be voted on the
353 determination.

354 (c) Authorization of indemnification shall be made in the same
355 manner as the determination that indemnification is permissible,
356 except that if there are fewer than two [disinterested] qualified
357 directors, or if the determination is made by special legal counsel,
358 authorization of indemnification shall be made by those entitled to
359 select special legal counsel under subparagraph (B) of subdivision (2)
360 of subsection (b) of this section. [to select special legal counsel.]

361 Sec. 9. Section 33-781 of the general statutes is repealed and the
362 following is substituted in lieu thereof (*Effective October 1, 2006*):

363 As used in sections 33-781 to 33-784, inclusive, as amended by this
364 act:

365 [(1) "Conflicting interest" with respect to a corporation means the
366 interest a director of the corporation has respecting a transaction
367 effected or proposed to be effected by the corporation or by a
368 subsidiary of the corporation or any other entity in which the
369 corporation has a controlling interest, if:

370 (A) Whether or not the transaction is brought before the board of
371 directors of the corporation for action, the director knows at the time of
372 commitment that he or a related person is a party to the transaction or
373 has a beneficial financial interest in or so closely linked to the
374 transaction and of such financial significance to the director or a
375 related person that the interest would reasonably be expected to exert
376 an influence on the director's judgment if he were called upon to vote
377 on the transaction; or

378 (B) The transaction is brought, or is of such character and
379 significance to the corporation that it would in the normal course be
380 brought, before the board of directors of the corporation for action, and

381 the director knows at the time of commitment that any of the following
382 persons is either a party to the transaction or has a beneficial financial
383 interest in or so closely linked to the transaction and of such financial
384 significance to the person that the interest would reasonably be
385 expected to exert an influence on the director's judgment if he were
386 called upon to vote on the transaction: (i) An entity, other than the
387 corporation, of which the director is a director, general partner, agent
388 or employee; (ii) a person that controls one or more of the entities
389 specified in subparagraph (B)(i) of this subdivision or an entity that is
390 controlled by, or is under common control with, one or more of the
391 entities specified in subparagraph (B)(i) of this subdivision; or (iii) an
392 individual who is a general partner, principal or employer of the
393 director.

394 (2) "Director's conflicting interest transaction" with respect to a
395 corporation means a transaction effected or proposed to be effected by
396 the corporation or by a subsidiary of the corporation or any other
397 entity in which the corporation has a controlling interest, respecting
398 which a director of the corporation has a conflicting interest.

399 (3) "Related person" of a director means (A) the spouse of the
400 director, or a parent or sibling thereof, or a child, grandchild, sibling or
401 parent of the director, or the spouse of any thereof, or an individual
402 having the same home as the director, or a trust or estate of which an
403 individual specified in this subparagraph is a substantial beneficiary,
404 or (B) a trust, estate, incompetent, conservatee or minor of which the
405 director is a fiduciary.

406 (4) "Required disclosure" means disclosure by the director who has
407 a conflicting interest of (A) the existence and nature of his conflicting
408 interest, and (B) all facts known to him respecting the subject matter of
409 the transaction that an ordinarily prudent person would reasonably
410 believe to be material to a judgment about whether or not to proceed
411 with the transaction.

412 (5) "Time of commitment" respecting a transaction means the time
413 when the transaction is consummated or, if made pursuant to contract,

414 the time when the corporation, or its subsidiary or the entity in which
415 it has a controlling interest, becomes contractually obligated so that its
416 unilateral withdrawal from the transaction would entail significant
417 loss, liability or other damage.]

418 (1) "Director's conflicting interest transaction" means a transaction
419 effected or proposed to be effected by the corporation, or by an entity
420 controlled by the corporation, (A) to which, at the relevant time, the
421 director is a party, (B) respecting which, at the relevant time, the
422 director had knowledge and a material financial interest known to the
423 director, or (C) respecting which, at the relevant time, the director
424 knew that a related person was a party or had a material financial
425 interest.

426 (2) "Control", including the term "controlled by", means (A) having
427 the power, directly or indirectly, to elect or remove a majority of the
428 members of the board of directors or other governing body of an
429 entity, whether through the ownership of voting shares or interests, by
430 contract, or otherwise, or (B) being subject to a majority of the risk of
431 loss from the entity's activities or entitled to receive a majority of the
432 entity's residual returns.

433 (3) "Relevant time" means (A) the time at which directors' action
434 respecting the transaction is taken in compliance with section 33-783,
435 as amended by this act, or (B) if the transaction is not brought before
436 the board of directors of the corporation, or its committee, for action
437 under section 33-783, as amended by this act, at the time the
438 corporation, or an entity controlled by the corporation, becomes legally
439 obligated to consummate the transaction.

440 (4) "Material financial interest" means a financial interest in a
441 transaction that would reasonably be expected to impair the objectivity
442 of the director when participating in action on the authorization of the
443 transaction.

444 (5) "Related person" means: (A) The director's spouse, or a parent or
445 sibling thereof; (B) a child, grandchild, parent or sibling of the director,

446 or the spouse of any thereof; (C) an individual (i) living in the same
447 home as the director, or (ii) a trust or estate of which a person specified
448 in subparagraph (A) or (B) of this subdivision or clause (i) of this
449 subparagraph is a substantial beneficiary; (D) an entity, other than the
450 corporation or an entity controlled by the corporation, controlled by
451 the director or any person specified in subparagraphs (A) to (C),
452 inclusive, of this subdivision; (E) a domestic or foreign (i) business or
453 nonprofit corporation, other than the corporation or an entity
454 controlled by the corporation, of which the director is a director, (ii)
455 unincorporated entity of which the director is a general partner or a
456 member of the governing body, or (iii) individual, trust or estate for
457 whom or of which the director is a trustee, guardian, personal
458 representative or like fiduciary; or (F) a person that is, or an entity that
459 is controlled by, an employer of the director.

460 (6) "Fair to the corporation" means, for purposes of subdivision (3)
461 of subsection (b) of section 33-782, as amended by this act, that the
462 transaction as a whole was beneficial to the corporation, taking into
463 appropriate account whether it was (A) fair in terms of the director's
464 dealings with the corporation, and (B) comparable to what might have
465 been obtainable in an arm's length transaction, given the consideration
466 paid or received by the corporation.

467 (7) "Required disclosure" means disclosure of (A) the existence and
468 nature of the director's conflicting interest, and (B) all facts known to
469 the director respecting the subject matter of the transaction that a
470 director free of such conflicting interest would reasonably believe to be
471 material in deciding whether to proceed with the transaction.

472 Sec. 10. Section 33-782 of the general statutes is repealed and the
473 following is substituted in lieu thereof (*Effective October 1, 2006*):

474 (a) A transaction effected or proposed to be effected by [a
475 corporation, or by a subsidiary of the corporation or any other entity in
476 which the corporation has a controlling interest, that is not a director's
477 conflicting interest transaction may not be enjoined, set aside or give
478 rise to an award of damages or other sanctions, in a proceeding by a

479 shareholder or by or in the right of the corporation, because a director
480 of the corporation, or any person with whom or which he has a
481 personal, economic or other association, has an interest in the
482 transaction] the corporation, or by an entity controlled by the
483 corporation, may not be the subject of equitable relief, or give rise to an
484 award of damages or other sanctions against a director of the
485 corporation, in a proceeding by a shareholder or by or in the right of
486 the corporation, on the ground that the director has an interest
487 respecting the transaction, if it is not a director's conflicting interest
488 transaction.

489 (b) A director's conflicting interest transaction may not be [enjoined,
490 set aside] the subject of equitable relief, or give rise to an award of
491 damages or other sanctions against a director of the corporation, in a
492 proceeding by a shareholder or by or in the right of the corporation,
493 [because the director, or any person with whom or which he has a
494 personal, economic or other association,] on the ground that the
495 director has an interest [in] respecting the transaction, if: (1) Directors'
496 action respecting the transaction was [at any time] taken in compliance
497 with section 33-783, as amended by this act, at any time; (2)
498 shareholders' action respecting the transaction was [at any time] taken
499 in compliance with section 33-784, as amended by this act, at any time;
500 or (3) the transaction, judged according to the circumstances at the
501 relevant time, [of commitment,] is established to have been fair to the
502 corporation.

503 Sec. 11. Section 33-783 of the general statutes is repealed and the
504 following is substituted in lieu thereof (*Effective October 1, 2006*):

505 (a) Directors' action respecting a director's conflicting interest
506 transaction is effective for purposes of subdivision (1) of subsection (b)
507 of section 33-782, as amended by this act, if the transaction [received]
508 has been authorized by the affirmative vote of a majority, but no fewer
509 than two, of [those qualified directors on the board of directors or on a
510 duly empowered committee of the board] the qualified directors who
511 voted on the transaction, after [either required disclosure to them, to

512 the extent the information was not known by them, or compliance with
513 subsection (b) of this section; provided that action by a committee is so
514 effective only if (1) all its members are qualified directors, and (2) its
515 members are either all the qualified directors on the board or are]
516 required disclosure by the conflicted director of information not
517 already known by such qualified directors, or after modified disclosure
518 in compliance with subsection (b) of this section, provided that where
519 the action has been taken by a committee, all members of the
520 committee were qualified directors, and either (1) the committee was
521 composed of all the qualified directors on the board of directors, or (2)
522 the members of the committee were appointed by the affirmative vote
523 of a majority of the qualified directors on the board.

524 [(b) If a director has a conflicting interest respecting a transaction,
525 but neither he nor a related person of the director specified in
526 subparagraph (A) of subdivision (3) of section 33-781 is a party to the
527 transaction, and if the director has a duty under law or professional
528 canon, or a duty of confidentiality to another person, respecting
529 information relating to the transaction such that the director may not
530 make the disclosure described in subparagraph (B) of subdivision (4)
531 of section 33-781, then disclosure is sufficient for purposes of
532 subsection (a) of this section if the director (1) discloses to the directors
533 voting on the transaction the existence and nature of his conflicting
534 interest and informs them of the character and limitations imposed by
535 that duty before their vote on the transaction, and (2) plays no part,
536 directly or indirectly, in their deliberations or vote.]

537 (b) Notwithstanding subsection (a) of this section, when a
538 transaction is a director's conflicting interest transaction only because a
539 related person described in subparagraph (E) or (F) of subdivision (5)
540 of section 33-781, as amended by this act, is a party to or has a material
541 financial interest in the transaction, the conflicted director is not
542 obligated to make required disclosure to the extent that the director
543 reasonably believes that doing so would violate a duty imposed under
544 law, a legally enforceable obligation of confidentiality or a professional
545 ethics rule, provided that the conflicted director discloses to the

546 qualified directors voting on the transaction: (1) All information
547 required to be disclosed that is not so violative, (2) the existence and
548 nature of the director's conflicting interest, and (3) the nature of the
549 conflicted director's duty not to disclose the confidential information.

550 (c) A majority, but no fewer than two, of all the qualified directors
551 on the board of directors, or on the committee, constitutes a quorum
552 for purposes of action that complies with this section. Directors' action
553 that otherwise complies with this section is not affected by the
554 presence or vote of a director who is not a qualified director.

555 [(d) For purposes of this section, "qualified director" means, with
556 respect to a director's conflicting interest transaction, any director who
557 does not have either (1) a conflicting interest respecting the transaction,
558 or (2) a familial, financial, professional or employment relationship
559 with a second director who does have a conflicting interest respecting
560 the transaction, which relationship would, in the circumstances,
561 reasonably be expected to exert an influence on the first director's
562 judgment when voting on the transaction.]

563 (d) Where directors' action under this section does not satisfy a
564 quorum or voting requirement applicable to the authorization of the
565 transaction by reason of the certificate of incorporation, the bylaws or a
566 provision of law, independent action to satisfy those authorization
567 requirements must be taken by the board of directors or a committee,
568 in which action directors who are not qualified directors may
569 participate.

570 Sec. 12. Section 33-784 of the general statutes is repealed and the
571 following is substituted in lieu thereof (*Effective October 1, 2006*):

572 (a) Shareholders' action respecting a director's conflicting interest
573 transaction is effective for purposes of subdivision (2) of subsection (b)
574 of section 33-782, as amended by this act, if a majority of the votes
575 [entitled to be] cast by the holders of all qualified shares [were cast] are
576 in favor of the transaction after (1) notice to shareholders describing
577 the [director's conflicting interest] action to be taken respecting the

578 transaction, (2) provision to the corporation of the information referred
579 to in subsection [(d)] (b) of this section, and (3) [required disclosure]
580 communication to the shareholders [who voted] entitled to vote on the
581 transaction of the information that is the subject of required disclosure,
582 to the extent the information [was] is not known by them.

583 [(b) For purposes of this section, "qualified shares" means any shares
584 entitled to vote with respect to the director's conflicting interest
585 transaction except shares that, to the knowledge, before the vote, of the
586 secretary or other officer or agent of the corporation authorized to
587 tabulate votes, are beneficially owned, or the voting of which is
588 controlled, by a director who has a conflicting interest respecting the
589 transaction or by a related person of the director, or both.

590 (c) A majority of the votes entitled to be cast by the holders of all
591 qualified shares constitutes a quorum for purposes of action that
592 complies with this section. Subject to the provisions of subsections (d)
593 and (e) of this section, shareholders' action that otherwise complies
594 with this section is not affected by the presence of holders, or the
595 voting, of shares that are not qualified shares.]

596 [(d)] (b) [For purposes of compliance with subsection (a) of this
597 section, a] A director who has a conflicting interest respecting the
598 transaction shall, before the shareholders' vote, inform the secretary or
599 other officer or agent of the corporation authorized to tabulate votes, in
600 writing, of the number [, and the identity of persons holding or
601 controlling the vote, of all] of shares that the director knows are
602 [beneficially owned, or the voting of which is controlled, by the
603 director or by a related person of the director, or both] not qualified
604 shares under subsection (c) of this section, and the identity of the
605 holders of those shares.

606 (c) For purposes of this section: (1) "Holder" means, and "held by"
607 refers to shares held by, both a record shareholder, as defined in
608 subdivision (7) of section 33-855, and a beneficial shareholder, as
609 defined in subdivision (2) of section 33-855; and (2) "qualified shares"
610 means all shares entitled to be voted with respect to the transaction

611 except for shares that the secretary or other officer or agent of the
612 corporation authorized to tabulate votes either knows, or under
613 subsection (b) of this section is notified, are held by (A) a director who
614 has a conflicting interest respecting the transaction, or (B) a related
615 person of the director, excluding a person described in subparagraph
616 (F) of subdivision (5) of section 33-781, as amended by this act.

617 (d) A majority of the votes entitled to be cast by the holders of all
618 qualified shares constitutes a quorum for purposes of compliance with
619 this section. Subject to the provisions of subsection (e) of this section,
620 shareholders' action that otherwise complies with this section is not
621 affected by the presence of holders, or by the voting, of shares that are
622 not qualified shares.

623 (e) If a shareholders' vote does not comply with subsection (a) of
624 this section solely because of a director's failure [of a director] to
625 comply with subsection [(d)] (b) of this section, and if the director
626 establishes that [his] the failure [did not determine and] was not
627 intended [by him] to influence and did not in fact determine the
628 outcome of the vote, the court may [, with or without further
629 proceedings respecting subdivision (3) of subsection (b) of section 33-
630 782,] take such action respecting the transaction and the director, and
631 may give such effect, if any, to the shareholders' vote, as [it] the court
632 considers appropriate in the circumstances.

633 (f) Where shareholders' action under this section does not satisfy a
634 quorum or voting requirement applicable to the authorization of the
635 transaction by reason of the certificate of incorporation, the bylaws or a
636 provision of law, independent action to satisfy those authorization
637 requirements must be taken by the shareholders, in which action
638 shares that are not qualified shares may participate.

639 Sec. 13. Subsection (d) of section 33-897 of the general statutes is
640 repealed and the following is substituted in lieu thereof (*Effective*
641 *October 1, 2006*):

642 (d) Within ten days of the commencement of a proceeding under

643 subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of
644 section 33-896 to dissolve a corporation that [has no shares listed on a
645 national securities exchange or regularly traded in a market
646 maintained by one or more members of a national securities exchange]
647 is not a public corporation, the corporation must send to all
648 shareholders, other than the petitioner, a notice stating that the
649 shareholders are entitled to avoid the dissolution of the corporation by
650 electing to purchase the petitioner's shares under section 33-900, as
651 amended by this act, and accompanied by a copy of said section.

652 Sec. 14. Subsection (a) of section 33-900 of the general statutes is
653 repealed and the following is substituted in lieu thereof (*Effective*
654 *October 1, 2006*):

655 (a) In a proceeding [by a shareholder] under subdivision (1) of
656 subsection (a) [or subdivision (2) of subsection (b)] of section 33-896 to
657 dissolve a corporation that [has no shares listed on a national securities
658 exchange or regularly traded in a market maintained by one or more
659 members of a national or affiliated securities association] is not a
660 public corporation, the corporation may elect or, if it fails to elect, one
661 or more shareholders may elect to purchase all shares owned by the
662 petitioning shareholder at the fair value of the shares. An election
663 pursuant to this section shall be irrevocable unless the court
664 determines that it is equitable to set aside or modify the election.

665 Sec. 15. (NEW) (*Effective October 1, 2006*) (a) A director's taking
666 advantage, directly or indirectly, of a business opportunity may not be
667 the subject of equitable relief, or give rise to an award of damages or
668 other sanctions against the director, in a proceeding by or in the right
669 of the corporation on the ground that such opportunity should have
670 first been offered to the corporation, if before becoming legally
671 obligated respecting the opportunity the director brings it to the
672 attention of the corporation and: (1) Action by qualified directors'
673 disclaiming the corporation's interest in the opportunity is taken in
674 compliance with the procedures set forth in section 33-783 of the
675 general statutes, as amended by this act, as if the decision being made

676 concerned a director's conflicting interest transaction; or (2)
677 shareholders' action disclaiming the corporation's interest in the
678 opportunity is taken in compliance with the procedures set forth in
679 section 33-784 of the general statutes, as amended by this act, as if the
680 decision being made concerned a director's conflicting interest
681 transaction; except that, rather than making required disclosure, as
682 defined in section 33-781 of the general statutes, as amended by this
683 act, in each case the director shall have made prior disclosure to those
684 acting on behalf of the corporation of all material facts concerning the
685 business opportunity that are then known to the director.

686 (b) In any proceeding seeking equitable relief or other remedies
687 based upon an alleged improper taking advantage of a business
688 opportunity by a director, the fact that the director did not employ the
689 procedure described in subsection (a) of this section before taking
690 advantage of the opportunity shall not create an inference that the
691 opportunity should have been first presented to the corporation or
692 alter the burden of proof otherwise applicable to establish that the
693 director breached a duty to the corporation in the circumstances.

694 Sec. 16. Section 33-1002 of the general statutes is repealed and the
695 following is substituted in lieu thereof (*Effective October 1, 2006*):

696 As used in sections 33-1000 to 33-1290, inclusive, and sections 17
697 and 26 of this act:

698 (1) "Address" means location as described by the full street number,
699 if any, street, city or town, state or country and not a mailing address
700 such as a post office box.

701 (2) "Board" or "board of directors" means the group of persons
702 vested with management of the affairs of the corporation irrespective
703 of the name by which such group is designated.

704 (3) "Business corporation" means a corporation with capital stock or
705 shares, incorporated under the laws of this state, whether general law
706 or special act and whether before or after January 1, 1997.

707 (4) "Bylaws" means the code or codes of rules adopted for the
708 regulation or management of the affairs of the corporation irrespective
709 of the name or names by which such rules are designated.

710 (5) "Certificate of incorporation" means the original certificate of
711 incorporation or restated certificate of incorporation, all amendments
712 thereto, and all certificates of merger or consolidation. In the case of a
713 specially chartered corporation, the "certificate of incorporation" means
714 the special charter of the corporation, including any portions of the
715 charters of its predecessor companies which have continuing effect,
716 and any amendments to the charter made by special act or pursuant to
717 general law. In the case of a corporation formed before January 1, 1961,
718 or of a specially chartered corporation, the "certificate of incorporation"
719 includes those portions of any other corporate instruments or
720 resolutions of current application in which are set out provisions of a
721 sort which either (A) are required by sections 33-1000 to 33-1290,
722 inclusive, to be embodied in the certificate of incorporation, or (B) are
723 expressly permitted by said sections to be operative only if included in
724 the certificate of incorporation. It also includes what were, prior to
725 January 1, 1961, designated at law as agreements of association, articles
726 of incorporation, charters and other such terms.

727 (6) "Class" means all members that under the certificate of
728 incorporation or sections 33-1000 to 33-1290, inclusive, are entitled to
729 vote and be counted together collectively on a matter at a meeting of
730 members. All members entitled by the certificate of incorporation or
731 said sections to vote generally on the matter are for that purpose a
732 single class.

733 (7) "Conspicuous" means so written that a reasonable person against
734 whom the writing is to operate should have noticed it. For example,
735 printing in italics or boldface or contrasting color, or typing in capitals
736 or underlined, is conspicuous.

737 (8) "Corporation" or "domestic corporation" means a corporation
738 without capital stock or shares, which is not a foreign corporation,
739 incorporated under the laws of this state, whether general law or

740 special act and whether before or after January 1, 1997, but shall not
741 include towns, cities, boroughs or any municipal corporation or
742 department thereof.

743 (9) "Deliver" or "delivery" means any method of delivery used in
744 conventional commercial practice including delivery by hand, mail,
745 commercial delivery and electronic transmission.

746 (10) "Distribution" means a direct or indirect transfer of money or
747 other property, or incurrence of indebtedness by a corporation to or for
748 the benefit of its members in respect of any of its membership interests,
749 or to or for the benefit of its officers or directors, provided the payment
750 of reasonable compensation for services rendered, the reimbursement
751 of reasonable expenses, the granting of benefits to members in
752 conformity with the corporation's nonprofit purposes and the making
753 of distributions upon dissolution or final liquidation as provided by
754 sections 33-1000 to 33-1290, inclusive, shall not be deemed a
755 distribution.

756 (11) "Document" includes anything delivered to the office of the
757 Secretary of the State for filing under sections 33-1000 to 33-1290,
758 inclusive.

759 (12) "Effective date of notice" is defined in section 33-1003.

760 (13) "Electronic transmission" or "electronically transmitted" means
761 any process of communication not directly involving the physical
762 transfer of paper that is suitable for the retention, retrieval and
763 reproduction of information by the recipient.

764 (14) "Entity" includes a corporation and foreign corporation;
765 business corporation and foreign business corporation; profit and
766 nonprofit unincorporated association; business trust, estate,
767 partnership, limited liability company, trust and two or more persons
768 having a joint or common economic interest; and state, United States,
769 or foreign government.

770 (15) "Foreign corporation" means any nonprofit corporation with or

771 without capital stock which is not organized under the laws of this
772 state.

773 (16) "Governmental subdivision" includes authority, county, district
774 and municipality.

775 (17) "Includes" denotes a partial definition.

776 (18) "Individual" includes the estate of an incompetent or deceased
777 individual.

778 (19) "Means" denotes an exhaustive definition.

779 (20) "Member" means a person having membership rights in a
780 corporation in accordance with the provisions of its certificate of
781 incorporation or bylaws.

782 (21) A corporation is "nonprofit" if no distribution may be made to
783 its members, directors or officers.

784 (22) "Notice" is defined in section 33-1003.

785 (23) "Person" includes individual and entity.

786 (24) "Principal office" of a domestic corporation means the address
787 of the principal office of such corporation in this state, if any, as the
788 same appears in the last annual report, if any, filed by such corporation
789 with the Secretary of the State. If no principal office so appears, the
790 corporation's "principal office" means the address in this state of the
791 corporation's registered agent for service as last shown on the records
792 of the Secretary of the State. In the case of a domestic corporation
793 which has not filed such an annual report or appointment of registered
794 agent for service, the "principal office" means the address of the
795 principal place of affairs of such corporation in this state, if any, and if
796 such corporation has no place of affairs in this state, its "principal
797 office" shall be the office of the Secretary of the State.

798 (25) "Proceeding" includes civil suit and criminal, administrative
799 and investigatory action.

800 (26) "Qualified director" is defined in section 17 of this act.

801 [(26)] (27) "Record date" means the date established under sections
802 33-1055 to 33-1077, inclusive, on which a corporation determines the
803 identity of its members and their interests for purposes of sections 33-
804 1000 to 33-1290, inclusive. The determinations shall be made as of the
805 close of business on the record date unless another time for doing so is
806 specified when the record date is fixed.

807 [(27)] (28) "Secretary" means the corporate officer to whom under
808 the bylaws or by the board of directors is delegated responsibility
809 under subsection (c) of section 33-1109 for custody of the minutes of
810 the meetings of the board of directors and of the members and for
811 authenticating records of the corporation.

812 [(28)] (29) "Secretary of the State" means the Secretary of the State of
813 Connecticut.

814 [(29)] (30) "Sign" or "signature" includes any manual, facsimile,
815 conformed or electronic signature.

816 [(30)] (31) "State", when referring to a part of the United States,
817 includes a state and commonwealth, and their agencies and
818 governmental subdivisions, and a territory and insular possession, and
819 their agencies and governmental subdivisions, of the United States.

820 [(31)] (32) "United States" includes any district, authority, bureau,
821 commission, department and other agency of the United States.

822 Sec. 17. (NEW) (*Effective October 1, 2006*) (a) For purposes of sections
823 33-1000 to 33-1290, inclusive, of the general statutes and section 26 of
824 this act, a qualified director is a director who, at the time action is to be
825 taken under:

826 (1) Section 33-1119 or 33-1121 of the general statutes, as amended by
827 this act, (A) is not a party to the proceeding, (B) is not a director who
828 sought approval for a director's conflicting interest transaction under
829 section 33-1129 of the general statutes, as amended by this act, or a

830 disclaimer of the corporation's interest in a business opportunity under
831 section 26 of this act, which approval or disclaimer is challenged in the
832 proceeding, and (C) does not have a material relationship with a
833 director described in either subparagraph (A) or (B) of this
834 subdivision;

835 (2) Section 33-1129 of the general statutes, as amended by this act, is
836 not a director (A) as to whom the transaction is a director's conflicting
837 interest transaction, or (B) who has a material relationship with
838 another director as to whom the transaction is a director's conflicting
839 interest transaction; or

840 (3) Section 26 of this act, would be a qualified director under
841 subdivision (2) of this subsection if the business opportunity were a
842 director's conflicting interest transaction.

843 (b) For purposes of this section:

844 (1) "Material relationship" means a familial, financial, professional
845 or employment relationship that would reasonably be expected to
846 impair the objectivity of the director's judgment when participating in
847 the action to be taken; and

848 (2) "Material interest" means an actual or potential benefit or
849 detriment, other than one which would devolve on the corporation or
850 the members or directors generally, that would reasonably be expected
851 to impair the objectivity of the director's judgment when participating
852 in the action to be taken.

853 (c) The presence of one or more of the following circumstances shall
854 not by itself prevent a director from being a qualified director:

855 (1) Nomination or election of the director to the current board by
856 any director who is not a qualified director with respect to the matter,
857 or by any person that has a material relationship with that director,
858 acting alone or participating with others; or

859 (2) Service as a director of another corporation of which a director

860 who is not a qualified director with respect to the matter, or any
861 individual who has a material relationship with that director, is also a
862 director.

863 Sec. 18. Section 33-1110 of the general statutes is repealed and the
864 following is substituted in lieu thereof (*Effective October 1, 2006*):

865 Each officer has the authority and shall perform the [duties]
866 functions set forth in the bylaws, or to the extent consistent with the
867 bylaws, the [duties] functions prescribed by the board of directors or
868 by direction of an officer authorized by the board of directors to
869 prescribe the [duties] functions of other officers.

870 Sec. 19. Section 33-1116 of the general statutes is repealed and the
871 following is substituted in lieu thereof (*Effective October 1, 2006*):

872 As used in sections 33-1116 to 33-1125, inclusive:

873 (1) "Corporation" includes any domestic or foreign predecessor
874 entity of a corporation in a merger.

875 (2) "Director" or "officer" means an individual who is or was a
876 director or officer, respectively, of a corporation or who, while a
877 director or officer of the corporation, is or was serving at the
878 corporation's request as a director, officer, partner, trustee, employee
879 or agent of another domestic or foreign corporation, partnership, joint
880 venture, trust, employee benefit plan or other entity. A director or
881 officer is considered to be serving an employee benefit plan at the
882 corporation's request if [his] the individual's duties to the corporation
883 also impose duties on, or otherwise involve services by, [him] the
884 individual to the plan or to participants in or beneficiaries of the plan.
885 "Director" or "officer" includes, unless the context requires otherwise,
886 the estate or personal representative of a director or officer.

887 [(3) "Disinterested director" means a director who at the time of a
888 vote referred to in subsection (c) of section 33-1119 or a vote or
889 selection referred to in subsection (b) or (c) of section 33-1121, is not
890 (A) a party to the proceeding or (B) an individual having a familial,

891 financial, professional or employment relationship with the director
892 whose indemnification or advance for expenses is the subject of the
893 decision being made, which relationship would, in the circumstances,
894 reasonably be expected to exert an influence on the director's judgment
895 when voting on the decision being made.]

896 [(4)] (3) "Expenses" include counsel fees.

897 [(5)] (4) "Liability" means the obligation to pay a judgment,
898 settlement, penalty, fine, including an excise tax assessed with respect
899 to an employee benefit plan, or reasonable expenses incurred with
900 respect to a proceeding.

901 [(6)] (5) "Official capacity" means: (A) When used with respect to a
902 director, the office of director in a corporation; and (B) when used with
903 respect to an [individual other than a director] officer, as contemplated
904 in section 33-1122, the office in a corporation held by the officer. [or the
905 employment or agency relationship undertaken by the employee or
906 agent on behalf of the corporation.] "Official capacity" does not include
907 service for any other domestic or foreign corporation or any
908 partnership, joint venture, trust, employee benefit plan or other entity.

909 [(7)] (6) "Party" means an individual who was, is or is threatened to
910 be made a defendant or respondent in a proceeding.

911 [(8)] (7) "Proceeding" means any threatened, pending or completed
912 action, suit or proceeding, whether civil, criminal, administrative,
913 arbitratative or investigative and whether formal or informal.

914 Sec. 20. Section 33-1119 of the general statutes is repealed and the
915 following is substituted in lieu thereof (*Effective October 1, 2006*):

916 (a) A corporation may, before final disposition of a proceeding,
917 advance funds to pay for or reimburse the reasonable expenses
918 incurred [by a director] in connection with the proceeding by an
919 individual who is a party to [a] the proceeding because [he is a director
920 if he] that individual is a member of the board of directors if the
921 director delivers to the corporation:

922 (1) A written affirmation of [his] the director's good faith belief that
923 [he has met] the relevant standard of conduct described in section 33-
924 1117 [,] has been met by the director or that the proceeding involves
925 conduct for which liability has been limited under a provision of the
926 certificate of incorporation as authorized by subdivision (4) of
927 subsection (b) of section 33-1026, as amended by this act; and

928 (2) [his] A written undertaking to repay any funds advanced if [he]
929 the director is not entitled to mandatory indemnification under section
930 33-1118 and it is ultimately determined under section 33-1120 or 33-
931 1121, as amended by this act, that [he] the director has not met the
932 relevant standard of conduct described in section 33-1117.

933 (b) The undertaking required by subdivision (2) of subsection (a) of
934 this section must be an unlimited general obligation of the director but
935 need not be secured and may be accepted without reference to the
936 financial ability of the director to make repayment.

937 (c) Authorizations under this section shall be made:

938 (1) By the board of directors: (A) If there are two or more
939 [disinterested] qualified directors, by a majority vote of all the
940 [disinterested] qualified directors, a majority of whom shall for such
941 purpose constitute a quorum, or by a majority of the members of a
942 committee of two or more [disinterested] qualified directors appointed
943 by such a vote; or (B) if there are fewer than two [disinterested]
944 qualified directors, by the vote necessary for action by the board in
945 accordance with subsection (c) of section 33-1100, in which
946 authorization directors who [do not qualify as disinterested] are not
947 qualified directors may participate; or

948 (2) [by] By the members, but a member who is also a director who at
949 the time [does not qualify as a disinterested] is not a qualified director
950 may not vote on the authorization.

951 Sec. 21. Section 33-1121 of the general statutes is repealed and the
952 following is substituted in lieu thereof (*Effective October 1, 2006*):

953 (a) A corporation may not indemnify a director under section 33-
954 1117 unless authorized for a specific proceeding after a determination
955 has been made that indemnification [of the director] is permissible
956 because [he] the director has met the relevant standard of conduct set
957 forth in said section.

958 (b) The determination shall be made:

959 (1) If there are two or more [disinterested] qualified directors, by the
960 board of directors by a majority vote of all the [disinterested] qualified
961 directors, a majority of whom shall for such purpose constitute a
962 quorum, or by a majority of the members of a committee of two or
963 more [disinterested] qualified directors appointed by such a vote;

964 (2) By special legal counsel (A) selected in the manner prescribed in
965 subdivision (1) of this subsection, or (B) if there are fewer than two
966 [disinterested] qualified directors, selected by the board of directors, in
967 which selection directors who [do not qualify as disinterested] are not
968 qualified directors may participate; or

969 (3) By the members entitled to vote to elect directors, but any such
970 member who is also a director who at the time [does not qualify as a
971 disinterested] is not a qualified director may not vote on the
972 determination.

973 (c) Authorization of indemnification shall be made in the same
974 manner as the determination that indemnification is permissible,
975 except that if there are fewer than two [disinterested] qualified
976 directors, or if the determination is made by special legal counsel,
977 authorization of indemnification shall be made by those entitled to
978 select special legal counsel under subparagraph (B) of subdivision (2)
979 of subsection (b) of this section. [to select special legal counsel.]

980 Sec. 22. Section 33-1127 of the general statutes is repealed and the
981 following is substituted in lieu thereof (*Effective October 1, 2006*):

982 As used in sections 33-1127 to 33-1130, inclusive, as amended by this
983 act:

984 [(1) "Conflicting interest" with respect to a corporation means the
985 interest a director of the corporation has respecting a transaction
986 effected or proposed to be effected by the corporation, or by a
987 subsidiary of the corporation or any other entity in which the
988 corporation has a controlling interest, if:

989 (A) Whether or not the transaction is brought before the board of
990 directors of the corporation for action, the director knows at the time of
991 commitment that he or a related person is a party to the transaction or
992 has a beneficial financial interest in or so closely linked to the
993 transaction and of such financial significance to the director or a
994 related person that the interest would reasonably be expected to exert
995 an influence on the director's judgment if he were called upon to vote
996 on the transaction; or

997 (B) The transaction is brought, or is of such character and
998 significance to the corporation that it would in the normal course be
999 brought, before the board of directors of the corporation for action, and
1000 the director knows at the time of commitment that any of the following
1001 persons is either a party to the transaction or has a beneficial financial
1002 interest in or so closely linked to the transaction and of such financial
1003 significance to the person that the interest would reasonably be
1004 expected to exert an influence on the director's judgment if he were
1005 called upon to vote on the transaction: (i) An entity, other than the
1006 corporation, of which the director is a director, general partner, agent
1007 or employee; (ii) a person that controls one or more of the entities
1008 specified in subparagraph (B)(i) of this subdivision or an entity that is
1009 controlled by, or is under common control with, one or more of the
1010 entities specified in subparagraph (B)(i) of this subdivision; or (iii) an
1011 individual who is a general partner, principal or employer of the
1012 director.

1013 (2) "Director's conflicting interest transaction" with respect to a
1014 corporation means a transaction effected or proposed to be effected by
1015 the corporation, or by a subsidiary of the corporation or any other
1016 entity in which the corporation has a controlling interest, respecting

1017 which a director of the corporation has a conflicting interest.

1018 (3) "Related person" of a director means (A) the spouse of the
1019 director, or a parent or sibling thereof, or a child, grandchild, sibling or
1020 parent of the director, or the spouse of any thereof, or an individual
1021 having the same home as the director, or a trust or estate of which an
1022 individual specified in this subparagraph is a substantial beneficiary,
1023 or (B) a trust, estate, incompetent, conservatee or minor of which the
1024 director is a fiduciary.

1025 (4) "Required disclosure" means disclosure by the director who has
1026 a conflicting interest of (A) the existence and nature of his conflicting
1027 interest, and (B) all facts known to him respecting the subject matter of
1028 the transaction that an ordinarily prudent person would reasonably
1029 believe to be material to a judgment about whether or not to proceed
1030 with the transaction.

1031 (5) "Time of commitment" respecting a transaction means the time
1032 when the transaction is consummated or, if made pursuant to contract,
1033 the time when the corporation, or its subsidiary or the entity in which
1034 it has a controlling interest, becomes contractually obligated so that its
1035 unilateral withdrawal from the transaction would entail significant
1036 loss, liability or other damage.]

1037 (1) "Director's conflicting interest transaction" means a transaction
1038 effected or proposed to be effected by the corporation, or by an entity
1039 controlled by the corporation, (A) to which, at the relevant time, the
1040 director is a party, (B) respecting which, at the relevant time, the
1041 director had knowledge and a material financial interest known to the
1042 director, or (C) respecting which, at the relevant time, the director
1043 knew that a related person was a party or had a material financial
1044 interest.

1045 (2) "Control", including the term "controlled by", means (A) having
1046 the power, directly or indirectly, to elect or remove a majority of the
1047 members of the board of directors or other governing body of an
1048 entity, whether through membership or the ownership of voting

1049 shares or interests, by contract, or otherwise, or (B) being subject to a
1050 majority of the risk of loss from the entity's activities or entitled to
1051 receive a majority of the entity's residual returns.

1052 (3) "Relevant time" means (A) the time at which directors' action
1053 respecting the transaction is taken in compliance with section 33-1129,
1054 as amended by this act, or (B) if the transaction is not brought before
1055 the board of directors of the corporation, or its committee, for action
1056 under section 33-1129, as amended by this act, at the time the
1057 corporation, or an entity controlled by the corporation, becomes legally
1058 obligated to consummate the transaction.

1059 (4) "Material financial interest" means a financial interest in a
1060 transaction that would reasonably be expected to impair the objectivity
1061 of the director when participating in action on the authorization of the
1062 transaction.

1063 (5) "Related person" means: (A) The director's spouse, or a parent or
1064 sibling thereof; (B) a child, grandchild, parent or sibling of the director,
1065 or the spouse of any thereof; (C) an individual (i) living in the same
1066 home as the director, or (ii) a trust or estate of which a person specified
1067 in subparagraph (A) or (B) of this subdivision or clause (i) of this
1068 subparagraph is a substantial beneficiary; (D) an entity, other than the
1069 corporation or an entity controlled by the corporation, controlled by
1070 the director or any person specified in subparagraphs (A) to (C),
1071 inclusive, of this subdivision; (E) a domestic or foreign (i) business or
1072 nonprofit corporation, other than the corporation or an entity
1073 controlled by the corporation, of which the director is a director, (ii)
1074 unincorporated entity of which the director is a general partner or a
1075 member of the governing body, or (iii) individual, trust or estate for
1076 whom or of which the director is a trustee, guardian, personal
1077 representative or like fiduciary; or (F) a person that is, or an entity that
1078 is controlled by, an employer of the director.

1079 (6) "Fair to the corporation" means, for purposes of subdivision (3)
1080 of subsection (b) of section 33-1128, as amended by this act, that the
1081 transaction as a whole was beneficial to the corporation, taking into

1082 appropriate account whether it was (A) fair in terms of the director's
1083 dealings with the corporation, and (B) comparable to what might have
1084 been obtainable in an arm's length transaction, given the consideration
1085 paid or received by the corporation.

1086 (7) "Required disclosure" means disclosure of (A) the existence and
1087 nature of the director's conflicting interest, and (B) all facts known to
1088 the director respecting the subject matter of the transaction that a
1089 director free of such conflicting interest would reasonably believe to be
1090 material in deciding whether to proceed with the transaction.

1091 Sec. 23. Section 33-1128 of the general statutes is repealed and the
1092 following is substituted in lieu thereof (*Effective October 1, 2006*):

1093 (a) A transaction effected or proposed to be effected by [a
1094 corporation, or by a subsidiary of the corporation or any other entity in
1095 which the corporation has a controlling interest, that is not a director's
1096 conflicting interest transaction may not be enjoined, set aside or give
1097 rise to an award of damages or other sanctions, in a proceeding by a
1098 member or director or by or in the right of the corporation, because a
1099 director of the corporation, or any person with whom or which he has
1100 a personal, economic or other association, has an interest in the
1101 transaction] the corporation, or by an entity controlled by the
1102 corporation, may not be the subject of equitable relief, or give rise to an
1103 award of damages or other sanctions against a director of the
1104 corporation, in a proceeding by a member or director or by or in the
1105 right of the corporation, on the ground that the director has an interest
1106 respecting the transaction, if it is not a director's conflicting interest
1107 transaction.

1108 (b) A director's conflicting interest transaction may not be [enjoined,
1109 set aside] the subject of equitable relief, or give rise to an award of
1110 damages or other sanctions against a director of the corporation, in a
1111 proceeding by a member or director or by or in the right of the
1112 corporation, [because the director, or any person with whom or which
1113 he has a personal, economic or other association,] on the ground that
1114 the director has an interest [in] respecting the transaction, if: (1)

1115 Directors' action respecting the transaction was [at any time] taken in
1116 compliance with section 33-1129, as amended by this act, at any time;
1117 (2) members' action respecting the transaction was [at any time] taken
1118 in compliance with section 33-1130, as amended by this act, at any
1119 time; or (3) the transaction, judged according to the circumstances at
1120 the relevant time, [of commitment,] is established to have been fair to
1121 the corporation.

1122 Sec. 24. Section 33-1129 of the general statutes is repealed and the
1123 following is substituted in lieu thereof (*Effective October 1, 2006*):

1124 (a) Directors' action respecting a director's conflicting interest
1125 transaction is effective for purposes of subdivision (1) of subsection (b)
1126 of section 33-1128, as amended by this act, if the transaction [received]
1127 has been authorized by the affirmative vote of a majority, but no fewer
1128 than two, of [those qualified directors on the board of directors or on a
1129 duly empowered committee of the board] the qualified directors who
1130 voted on the transaction, after [either required disclosure to them, to
1131 the extent the information was not known by them, or compliance with
1132 subsection (b) of this section; provided that action by a committee is so
1133 effective only if (1) all committee members are qualified directors, and
1134 (2) committee members are either all the qualified directors on the
1135 board or are] required disclosure by the conflicted director of
1136 information not already known by such qualified directors, or after
1137 modified disclosure in compliance with subsection (b) of this section,
1138 provided that where the action has been taken by a committee, all
1139 members of the committee were qualified directors, and either (1) the
1140 committee was composed of all the qualified directors on the board of
1141 directors, or (2) the members of the committee were appointed by the
1142 affirmative vote of a majority of the qualified directors on the board.

1143 [(b) If a director has a conflicting interest respecting a transaction,
1144 but neither he nor a related person of the director specified in
1145 subparagraph (A) of subdivision (3) of section 33-1127 is a party to the
1146 transaction, and if the director has a duty under law or professional
1147 canon, or a duty of confidentiality to another person, respecting

1148 information relating to the transaction such that the director may not
1149 make the disclosure described in subparagraph (B) of subdivision (4)
1150 of section 33-1127, then disclosure is sufficient for purposes of
1151 subsection (a) of this section if the director (1) discloses to the directors
1152 voting on the transaction the existence and nature of his conflicting
1153 interest and informs them of the character and limitations imposed by
1154 that duty before their vote on the transaction, and (2) plays no part,
1155 directly or indirectly, in their deliberations or vote.]

1156 (b) Notwithstanding subsection (a) of this section, when a
1157 transaction is a director's conflicting interest transaction only because a
1158 related person described in subparagraph (E) or (F) of subdivision (5)
1159 of section 33-1127, as amended by this act, is a party to or has a
1160 material financial interest in the transaction, the conflicted director is
1161 not obligated to make required disclosure to the extent that the
1162 director reasonably believes that doing so would violate a duty
1163 imposed under law, a legally enforceable obligation of confidentiality
1164 or a professional ethics rule, provided that the conflicted director
1165 discloses to the qualified directors voting on the transaction: (1) All
1166 information required to be disclosed that is not so violative, (2) the
1167 existence and nature of the director's conflicting interest, and (3) the
1168 nature of the conflicted director's duty not to disclose the confidential
1169 information.

1170 (c) A majority, but no fewer than two, of all the qualified directors
1171 on the board of directors, or on the committee, constitutes a quorum
1172 for purposes of action that complies with this section. Directors' action
1173 that otherwise complies with this section is not affected by the
1174 presence or vote of a director who is not a qualified director.

1175 [(d) For purposes of this section, "qualified director" means, with
1176 respect to a director's conflicting interest transaction, any director who
1177 does not have either (1) a conflicting interest respecting the transaction,
1178 or (2) a familial, financial, professional or employment relationship
1179 with a second director who does have a conflicting interest respecting
1180 the transaction, which relationship would, in the circumstances,

1181 reasonably be expected to exert an influence on the first director's
1182 judgment when voting on the transaction.]

1183 (d) Where directors' action under this section does not satisfy a
1184 quorum or voting requirement applicable to the authorization of the
1185 transaction by reason of the certificate of incorporation, the bylaws or a
1186 provision of law, independent action to satisfy those authorization
1187 requirements must be taken by the board of directors or a committee,
1188 in which action directors who are not qualified directors may
1189 participate.

1190 Sec. 25. Section 33-1130 of the general statutes is repealed and the
1191 following is substituted in lieu thereof (*Effective October 1, 2006*):

1192 (a) Members' action respecting a director's conflicting interest
1193 transaction is effective for purposes of subdivision (2) of subsection (b)
1194 of section 33-1128, as amended by this act, if a majority of the votes
1195 cast by the members entitled to vote [were cast] are in favor of the
1196 transaction after (1) notice to members entitled to vote describing the
1197 [director's conflicting interest] action to be taken respecting the
1198 transaction, (2) provision to the corporation of the information referred
1199 to in subsection [(d)] (b) of this section, and (3) [required disclosure]
1200 communication to the members [who voted] entitled to vote on the
1201 transaction of the information that is the subject of required disclosure,
1202 to the extent the information [was] is not known by them.

1203 (b) A director who has a conflicting interest respecting the
1204 transaction shall, before the members' vote, inform the secretary or
1205 other officer or agent of the corporation authorized to tabulate votes, in
1206 writing, of any members entitled to vote who, to the knowledge of
1207 such director, are (1) a director who has a conflicting interest
1208 respecting the transaction, or (2) a related person of any such director,
1209 excluding a person described in subparagraph (F) of subdivision (5) of
1210 section 33-1127, as amended by this act.

1211 [(b)] (c) For purposes of this section, the members entitled to vote
1212 with respect to a director's conflicting interest transaction [means] are

1213 any members entitled to vote, except members entitled to vote who [,
1214 to the knowledge, before the vote, of] the secretary or other officer or
1215 agent of the corporation authorized to tabulate votes [, are (1) directors
1216 who have a conflicting interest respecting the transaction, or (2)
1217 controlled by directors who have] either knows, or under subsection
1218 (b) of this section is notified, are either (1) a director who has a
1219 conflicting interest respecting the transaction, or [by] (2) a related
1220 person of [any such director, or both] the director, excluding a person
1221 described in subparagraph (F) of subdivision (5) of section 33-1127, as
1222 amended by this act.

1223 [(c) The members entitled to vote present in person, or by proxy if
1224 voting by proxy is permitted, or voting by ballot if voting by ballot is
1225 permitted, constitute a quorum for purposes of action that complies
1226 with this section, unless the certificate of incorporation or bylaws
1227 require a greater number. Subject to the provisions of subsections (d)
1228 and (e) of this section, members' action that otherwise complies with
1229 this section is not affected by the presence of members, or the vote of
1230 members, that are not members entitled to vote.

1231 (d) For purposes of compliance with subsection (a) of this section, a
1232 director who has a conflicting interest respecting the transaction shall,
1233 before the members' vote, inform the secretary or other officer or agent
1234 of the corporation authorized to tabulate votes, of the number, and the
1235 identity of persons holding or controlling the vote, of all members that
1236 the director knows are controlled by the director or by a related person
1237 of the director, or both.]

1238 (d) A majority of the votes entitled to be cast by the members
1239 entitled to vote with respect to the transaction constitutes a quorum for
1240 purposes of compliance with this section. Subject to the provisions of
1241 subsection (e) of this section, members' action that otherwise complies
1242 with this section is not affected by the presence, or by the voting, of
1243 members that are not entitled to vote with respect to the transaction.

1244 (e) If a members' vote does not comply with subsection (a) of this
1245 section solely because of a director's failure [of a director] to comply

1246 with subsection [(d)] (b) of this section, and if the director establishes
1247 that [his] the failure [did not determine and] was not intended [by
1248 him] to influence and did not in fact determine the outcome of the
1249 vote, the court may [, with or without further proceedings respecting
1250 subdivision (3) of subsection (b) of section 33-1128,] take such action
1251 respecting the transaction and the director, and may give such effect, if
1252 any, to the members' vote, as [it] the court considers appropriate in the
1253 circumstances.

1254 (f) Where members' action under this section does not satisfy a
1255 quorum or voting requirement applicable to the authorization of the
1256 transaction by reason of the certificate of incorporation, the bylaws or a
1257 provision of law, independent action to satisfy those authorization
1258 requirements must be taken by the members, in which action members
1259 that are not entitled to vote on the transaction may participate.

1260 Sec. 26. (NEW) (*Effective October 1, 2006*) (a) A director's taking
1261 advantage, directly or indirectly, of a business opportunity may not be
1262 the subject of equitable relief, or give rise to an award of damages or
1263 other sanctions against the director, in a proceeding by or in the right
1264 of the corporation on the ground that such opportunity should have
1265 first been offered to the corporation, if before becoming legally
1266 obligated respecting the opportunity the director brings it to the
1267 attention of the corporation and: (1) Directors' action disclaiming the
1268 corporation's interest in the opportunity is taken in compliance with
1269 the procedures set forth in section 33-1129 of the general statutes, as
1270 amended by this act, as if the decision being made concerned a
1271 director's conflicting interest transaction; or (2) members' action
1272 disclaiming the corporation's interest in the opportunity is taken in
1273 compliance with the procedures set forth in section 33-1130 of the
1274 general statutes, as amended by this act, as if the decision being made
1275 concerned a director's conflicting interest transaction; except that,
1276 rather than making required disclosure, as defined in section 33-1127
1277 of the general statutes, as amended by this act, in each case the director
1278 shall have made prior disclosure to those acting on behalf of the
1279 corporation of all material facts concerning the business opportunity

1280 that are then known to the director.

1281 (b) In any proceeding seeking equitable relief or other remedies
1282 based upon an alleged improper taking advantage of a business
1283 opportunity by a director, the fact that the director did not employ the
1284 procedure described in subsection (a) of this section before taking
1285 advantage of the opportunity shall not create an inference that the
1286 opportunity should have been first presented to the corporation or
1287 alter the burden of proof otherwise applicable to establish that the
1288 director breached a duty to the corporation in the circumstances.

1289 Sec. 27. Subsection (b) of section 33-636 of the general statutes is
1290 repealed and the following is substituted in lieu thereof (*Effective*
1291 *October 1, 2006*):

1292 (b) The certificate of incorporation may set forth: (1) The names and
1293 addresses of the individuals who are to serve as the initial directors; (2)
1294 provisions not inconsistent with law regarding: (A) The purpose or
1295 purposes for which the corporation is organized; (B) managing the
1296 business and regulating the affairs of the corporation; (C) defining,
1297 limiting and regulating the powers of the corporation, its board of
1298 directors and shareholders; (D) a par value for authorized shares or
1299 classes of shares; (E) the imposition of personal liability on
1300 shareholders for the debts of the corporation to a specified extent and
1301 upon specified conditions; (3) any provision that under sections 33-600
1302 to 33-998, inclusive, is required or permitted to be set forth in the
1303 bylaws; (4) a provision limiting the personal liability of a director to
1304 the corporation or its shareholders for monetary damages for breach of
1305 duty as a director to an amount that is not less than the compensation
1306 received by the director for serving the corporation during the year of
1307 the violation if such breach did not (A) involve a knowing and
1308 culpable violation of law by the director, (B) enable the director or an
1309 associate, as defined in section 33-840, to receive an improper personal
1310 economic gain, (C) show a lack of good faith and a conscious disregard
1311 for the duty of the director to the corporation under circumstances in
1312 which the director was aware that his conduct or omission created an

1313 unjustifiable risk of serious injury to the corporation, (D) constitute a
1314 sustained and unexcused pattern of inattention that amounted to an
1315 abdication of the director's duty to the corporation, or (E) create
1316 liability under section 33-757, provided no such provision shall limit or
1317 preclude the liability of a director for any act or omission occurring
1318 prior to the effective date of such provision; and (5) a provision
1319 permitting or making obligatory indemnification of a director for
1320 liability, as defined in [subdivision (5) of] section 33-770, as amended
1321 by this act, to any person for any action taken, or any failure to take
1322 any action, as a director, except liability that (A) involved a knowing
1323 and culpable violation of law by the director, (B) enabled the director
1324 or an associate, as defined in section 33-840, to receive an improper
1325 personal gain, (C) showed a lack of good faith and a conscious
1326 disregard for the duty of the director to the corporation under
1327 circumstances in which the director was aware that his conduct or
1328 omission created an unjustifiable risk of serious injury to the
1329 corporation, (D) constituted a sustained and unexcused pattern of
1330 inattention that amounted to an abdication of the director's duty to the
1331 corporation or (E) created liability under section 33-757, provided no
1332 such provision shall affect the indemnification of or advance of
1333 expenses to a director for any liability stemming from acts or
1334 omissions occurring prior to the effective date of such provision.

1335 Sec. 28. Subsection (b) of section 33-1026 of the general statutes is
1336 repealed and the following is substituted in lieu thereof (*Effective*
1337 *October 1, 2006*):

1338 (b) The certificate of incorporation may set forth: (1) The names and
1339 addresses of the individuals who are to serve as the initial directors; (2)
1340 provisions not inconsistent with law regarding: (A) Managing and
1341 regulating the affairs of the corporation; or (B) defining, limiting and
1342 regulating the powers of the corporation, its board of directors and
1343 members or any class of members; (3) any provision that under
1344 sections 33-1000 to 33-1290, inclusive, is required or permitted to be set
1345 forth in the bylaws; (4) a provision limiting the personal liability of a
1346 director to the corporation or its members for monetary damages for

1347 breach of duty as a director to an amount that is not less than the
 1348 compensation received by the director for serving the corporation
 1349 during the year of the violation if such breach did not (A) involve a
 1350 knowing and culpable violation of law by the director, (B) enable the
 1351 director or an associate, as defined in section 33-840, to receive an
 1352 improper personal economic gain, (C) show a lack of good faith and a
 1353 conscious disregard for the duty of the director to the corporation
 1354 under circumstances in which the director was aware that his conduct
 1355 or omission created an unjustifiable risk of serious injury to the
 1356 corporation, or (D) constitute a sustained and unexcused pattern of
 1357 inattention that amounted to an abdication of the director's duty to the
 1358 corporation, provided no such provision shall limit or preclude the
 1359 liability of a director for any act or omission occurring prior to the
 1360 effective date of such provision; and (5) a provision permitting or
 1361 making obligatory indemnification of a director for liability, as defined
 1362 in [subdivision (5) of] section 33-1116, as amended by this act, to any
 1363 person for any action taken, or any failure to take any action, as a
 1364 director, except liability that (A) involved a knowing and culpable
 1365 violation of law by the director, (B) enabled the director or an
 1366 associate, as defined in section 33-840, to receive an improper personal
 1367 gain, (C) showed a lack of good faith and a conscious disregard for the
 1368 duty of the director to the corporation under circumstances in which
 1369 the director was aware that his conduct or omission created an
 1370 unjustifiable risk of serious injury to the corporation, or (D) constituted
 1371 a sustained and unexcused pattern of inattention that amounted to an
 1372 abdication of the director's duty to the corporation, provided no such
 1373 provision shall affect the indemnification of or advance of expenses to
 1374 a director for any liability stemming from acts or omissions occurring
 1375 prior to the effective date of such provision.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2006</i>	33-602
Sec. 2	<i>October 1, 2006</i>	New section
Sec. 3	<i>October 1, 2006</i>	33-717(d)

Sec. 4	<i>October 1, 2006</i>	33-724
Sec. 5	<i>October 1, 2006</i>	33-764
Sec. 6	<i>October 1, 2006</i>	33-770
Sec. 7	<i>October 1, 2006</i>	33-773
Sec. 8	<i>October 1, 2006</i>	33-775
Sec. 9	<i>October 1, 2006</i>	33-781
Sec. 10	<i>October 1, 2006</i>	33-782
Sec. 11	<i>October 1, 2006</i>	33-783
Sec. 12	<i>October 1, 2006</i>	33-784
Sec. 13	<i>October 1, 2006</i>	33-897(d)
Sec. 14	<i>October 1, 2006</i>	33-900(a)
Sec. 15	<i>October 1, 2006</i>	New section
Sec. 16	<i>October 1, 2006</i>	33-1002
Sec. 17	<i>October 1, 2006</i>	New section
Sec. 18	<i>October 1, 2006</i>	33-1110
Sec. 19	<i>October 1, 2006</i>	33-1116
Sec. 20	<i>October 1, 2006</i>	33-1119
Sec. 21	<i>October 1, 2006</i>	33-1121
Sec. 22	<i>October 1, 2006</i>	33-1127
Sec. 23	<i>October 1, 2006</i>	33-1128
Sec. 24	<i>October 1, 2006</i>	33-1129
Sec. 25	<i>October 1, 2006</i>	33-1130
Sec. 26	<i>October 1, 2006</i>	New section
Sec. 27	<i>October 1, 2006</i>	33-636(b)
Sec. 28	<i>October 1, 2006</i>	33-1026(b)

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill, which makes various changes to stock and nonstock corporation laws, will have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 547*****AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT AND THE CONNECTICUT REVISED NONSTOCK CORPORATION ACT.*****SUMMARY:**

This bill makes various changes to the stock and nonstock corporation laws. It:

1. makes several changes regarding a director's conflicting interest transactions, including expanding the category of people whose interest in a transaction will be attributed to the director;
2. establishes a procedure for a director who wants to take advantage of a business opportunity that might be suitable for a corporation to first present it to the board or shareholders to obtain a disclaimer;
3. clarifies the procedure for a court to dismiss a derivative proceeding after qualified directors have made a reasonable determination that the suit is not in the corporation's best interest;
4. alters the rules pertaining to which directors are qualified to approve indemnification of directors; and
5. eliminates the right of non-public corporations or their shareholders, in connection with a corporate dissolution proceeding, to purchase shares to avoid the dissolution under certain circumstances.

The bill also makes several technical changes.

EFFECTIVE DATE: October 1, 2006

DERIVATIVE ACTIONS

By law, any stockholder may initiate a stockholder's lawsuit in his own name and on behalf of other stockholders to protect the corporation from the wrongful acts of its directors and officers. This is called a derivative action.

The law requires a court to dismiss a derivative action if independent directors determine by a majority vote, at a meeting where independent directors constitute a quorum, that it is not in the corporation's best interest. The law does not define "independent director." But it specifies that none of the following by itself can cause a director not to be independent: (1) the nomination or election of the director by people who are defendants in the derivative proceeding, or against whom action is demanded; (2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or (3) the director's approval of the act of being challenged in the derivative proceeding if the act resulted in no personal benefit to him.

The bill instead gives the authority to determine that a derivative action is not in the corporation's best interest to directors who do not have (1) a material interest in the outcome of the proceeding or (2) a material relationship with a person who has such an interest.

The bill defines a "material relationship" as a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

It defines a "material interest" as an actual or potential benefit or detriment, other than one that would (1) devolve on the corporation or the shareholders generally and (2) reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

The bill specifies that the presence of one or more of the following circumstances does not automatically result in a director having a

conflict of interest:

1. nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;
2. service as a director of another corporation of which a director has a conflict of interest or service as a director of such corporation by any individual who has a material relationship with the director; or
3. status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

DUTIES OF OFFICERS

Under the bill, each officer has the authority and must perform the functions, instead of the duties, set forth in the bylaws or, to the extent consistent with the bylaws, the functions, instead of the duties, prescribed by the board of directors or an officer authorized by the board.

AUTHORIZATION OF INDEMNIFICATION FOR DIRECTORS

By law, a corporation may indemnify a director for liability he incurred in a legal proceeding if the board, a board committee, or the shareholders determine that he met the standard of conduct the law requires. Under current law, the determination may be made by a majority vote of disinterested directors, or a majority of a committee of disinterested directors.

Current law defines “disinterested director” as one who, at the time of a vote relating to indemnification, (1) is not a party to the proceeding or (2) does not have a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made that would reasonably be expected to influence his judgment.

The bill requires that qualified directors instead of disinterested directors make the decision. The main differences are (1) the additional requirement that the relationship must be material; (2) the relationship is not limited to the ones specified above but can be any other relationship; and (3) the relationship must be one that would reasonably be expected to impair the director's objectivity instead of a relationship that would reasonably be expected to influence his judgment.

The bill defines the term "qualified director" as one who, at the time action is to be taken, (1) is not a director who is a party to the proceeding or sought approval for the transaction or (2) does not have a material relationship with such a director. A "material relationship" means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken. A "material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

The bill specifies that the presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

1. nomination or election to the current board by any director who is not a qualified director, or by any person that has a material relationship with that director, acting alone or participating with others; or
2. service as a director of another corporation of which a director who has a conflict of interest, or any individual who has a material relationship with the director who has a conflict of interest, is also a director.

By law, a corporation may advance funds to pay for or reimburse

the reasonable expenses incurred by a director in a legal proceeding against him before the proceeding is over. A corporation may do so by a vote of disinterested directors or a vote of shareholders. Just as with the indemnification process, the bill replaces the concept of disinterested director with the concept of qualified directors.

DIRECTOR'S CONFLICT OF INTEREST TRANSACTIONS

By law, a court may not invalidate a transaction by a corporation or any entity it controls, award damages, or otherwise remedy conduct because a director had a conflict of interest if it:

1. does not come within the statutory definition of a director's conflicting interest transaction,
2. was disclosed to the board and approved by a majority of directors who do not have a conflict of interest regarding the vote, or
3. was approved by a majority vote of shares not owned or controlled by a director who has a conflict of interest.

The bill retains this rule and general approach, but makes several adjustments to it.

First, it alters the definition of a director's conflicting interest transaction. Under current law, a transaction can be a conflicting interest transaction if a director or related person is a party or has a beneficial financial interest in, or is so closely linked to, a transaction and it is of such financial significance that it reasonably would be expected to influence the director's judgment.

The bill is similar in that it makes a transaction conflicting if the director knew that a related person was a party or had a material financial interest. But the bill eliminates the current definition and replaces it with a broader definition that specifically includes a larger class of people. Specifically, the bill adds the following classes of people to the definition of "related people": the director's or spouse's

grandparents, stepchildren, stepparents, aunts, uncles, nieces, nephews, and any of their spouses. It also adds any entity they control. Finally, it adds any entity controlled by the director's spouse, or the director's or spouse's child, grandchild, parent, or sibling, or the spouse of any such person.

Current law also defines a transaction as conflicting if it is brought before the board, or it normally would be brought before the board, and the director knows that certain people or entities are either (1) a party to the transaction or (2) have such a financially significant interest in the transaction that it would reasonably be expected to exert an influence on the director's judgment. The people or entities are:

1. an entity of which the director is a director, general partner, agent, or employee, or a person that controls such an entity, or an entity that is controlled by or under common control with such an entity; or
2. a person who is the director's general partner, principal, or employer.

The bill eliminates this provision but substitutes a similar one. The main differences are that the bill includes limited liability companies and other unincorporated entities of which the director is a member of its governing body. The bill excludes an entity for which the director acts as an agent.

The bill defines "control" as:

1. having the power, directly or indirectly, to elect or remove a majority of the members of the board or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or
2. being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

The bill defines “material financial interest” as a financial interest in a transaction that would reasonably be expected to impair the director’s objectivity when participating in an action to authorize the transaction.

Transactions that are Fair to the Corporation

The law also prohibits a court from invalidating a conflicting interest transaction if it was fair to the corporation. The bill defines this as any transaction that as a whole benefited the corporation, taking into appropriate account whether it was:

1. fair in terms of the director’s dealings with the corporation; and
2. comparable to what might have been obtainable in an “arm’s length transaction,” in light of what the corporation paid and received.

Approval By the Board of Directors

By law, the board or a board committee can approve a transaction involving a conflict of interest under certain circumstances, including that the vote to approve be by qualified directors (those who do not have a conflict of interest) after certain required disclosures. The bill alters the class of directors that can vote on such approval.

Qualified Director. Under current law, a “qualified director” for this purpose is any director who does not have either (1) a conflicting interest respecting the transaction or (2) a familial, financial, professional, or employment relationship with another director who has a conflicting interest in the transaction that, in the circumstances, would reasonably be expected to influence the first director’s judgment when voting on the transaction.

The bill alters this definition of “qualified director” by requiring that the relationship reasonably be expected to impair a director’s objectivity instead of requiring that the relationship reasonably be expected to influence the director’s judgment.

Required Disclosures. The law also requires that the director make certain disclosures to the board in connection with the board's decision concerning approving the transaction. Current law requires that the disclosures include all facts the director knows about the transaction that an ordinarily prudent person would reasonably believe to be material to determine whether to proceed with the transaction. Instead, the bill requires that the disclosures include all facts the director knows about the transaction that a director free of the conflict of interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Limited Disclosures to Qualified Directors. Under current law, a director does not have to make those disclosures if he has a duty under law or a professional cannon, or otherwise has a duty of confidentiality to another person, about information relating to the transaction. The rule applies only if the director is in a fiduciary position with respect to a trust, estate, incompetent, conservatee, or minor that is either a party to the transaction or has a financially significant beneficial interest in it. Under such circumstances, he is required to disclose to the directors voting on the transaction only the existence and nature of his conflicting interest and inform them of the character and limitations imposed by that duty before their vote on the transaction.

The bill instead allows a director to refrain from full disclosure if the transaction is a conflict because any of the following is a party or has a material financial interest: (1) a domestic or foreign business or nonprofit corporation of which he is a director; (2) an unincorporated entity of which he is a general partner or a member of the governing body; or (3) an individual, trust, or estate for whom, or of which he is a trustee, guardian, personal representative, or similar fiduciary; or (4) a person or entity controlled by his employer. Under such circumstances, the bill requires that the disclosures to qualified directors include (1) all information that does not violate the director's duty of confidentiality, (2) the existence and nature of his conflicting interest, and (3) the nature of his duty not to disclose the confidential information.

Voting or Quorum Requirement. The bill specifies that when the directors' action to approve a transaction does not satisfy a quorum or voting requirement that applies to the authorization of the transaction under the certificate of incorporation, the bylaws, or a provision of law, the board must take independent action to satisfy those authorization requirements. The bill permits directors who are not qualified directors to participate in such action.

APPROVAL BY SHAREHOLDERS

By law, a court may not invalidate a corporation's transaction, award damages, or otherwise remedy conduct because a director had a conflict of interest if a majority of the votes cast by shareholders who do not have a conflict approve it. The bill requires that approval be by a majority of the votes cast by holders of all qualified shares instead of by a majority of the votes entitled to be cast by holders of all qualified shares.

Under current law, a director who has a conflicting interest respecting the transaction must, before the shareholders' vote, inform the secretary or other corporate officer or agent authorized to tabulate votes, of the number of all the shares that the director knows are owned by, or the voting of which is controlled by, the director or by a person related to the director. The bill requires that the director do so in writing. Also, it eliminates the requirement that the information the director provides include the identity of persons holding or controlling the vote.

Other Voting or Quorum Requirements. The bill specifies that when the shareholders' action to approve a transaction does not satisfy a quorum or voting requirement that applies to the authorization of the transaction under the certificate of incorporation, the bylaws, or a provision of law, the shareholders must take independent action to satisfy those authorization requirements. The bill permits holders of shares that are not qualified shares to participate in such action.

PROCEDURE FOR JUDICIAL DISSOLUTION

The bill eliminates a non-public corporation's duty to send shareholders a notice stating that they are entitled to avoid the dissolution of the corporation by electing to purchase the shares of the person seeking dissolution when the dissolution is based on a proceeding by a shareholder or a director in which it is established that either (1) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, or (2) the shareholders are deadlocked in voting power for the election of directors and have been unable at the preceding annual meeting to elect successors to directors whose term would normally have expired upon the election of their successors.

It also eliminates the right of a corporation to elect, or if it fails to elect, one or more shareholders to elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares when the dissolution is for the same reason as specified above.

A non-public corporation is one that does not have shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

CORPORATE OPPORTUNITIES

The common law doctrine of "corporate opportunity" is a part of the director's duty of loyalty to the corporation. Under this doctrine, a corporation has a right to act before its director do, on certain business opportunities that come to the director's attention. In such situations, a director who acts on the opportunity for his own benefit without having first presented it to the corporation can be held to have "usurped" or "intercepted" the corporation's right. A director who has violates his duty of loyalty is subject to damages or equitable remedies, including injunction, disgorgement, or the imposition of a constructive trust in the corporation's favor.

The bill provides a safe harbor for a director considering possible involvement with a prospective business opportunity that might

constitute a “corporate opportunity.” It allows a director to present a business opportunity to the board or its shareholders for consideration. By following the bill’s procedures before pursuing the opportunity for himself, the director can receive a disclaimer of the corporation’s interest in the matter and thereby be able to pursue the opportunity himself.

The bill protects a director from damages or some other remedy in a lawsuit against him by the corporation or shareholders initiating a legal action in the corporation’s name because he directly or indirectly took advantage of a business opportunity that should have first been offered to the corporation, if he gets the board of directors or the shareholders to reject the opportunity. Before seeking such rejection, the bill requires the director to disclose all material facts that he knows about the business opportunity.

Board Approval

The bill requires that a director get the approval of qualified directors in the same manner and following the same procedures that a director seeking approval of a transaction involving a conflict of interest must follow.

Specifically, the bill requires the approval to be by the affirmative vote of a majority, but at least two, of the qualified directors. It permits approval by a board committee if all committee members were qualified directors and either (1) the committee consisted of all the qualified directors on the board of directors or (2) the committee members were appointed by the affirmative vote of a majority of the qualified directors on the board.

The bill defines a “qualified director” for this purpose as one who (1) is not attempting to take advantage of the business opportunity and (2) does not have a material relationship with another director attempting to take advantage of the business opportunity. The bill defines “material relationship” for this purpose as a familial, financial, professional, employment, or other relationship that would reasonably

be expected to impair the director's objective judgment when participating in the action to be taken.

Shareholder Approval

Under the bill, shareholders' action to reject a business opportunity is effective if a majority of the votes cast by the holders of all qualified shares favor the rejection after (1) notice to shareholders describing the business opportunity and (2) disclosure to the shareholders of all material facts that the director knows about the business opportunity.

The term "qualified shares" means all shares entitled to be voted with respect to the rejection of the business opportunity except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or has been advised by the director seeking the vote are held by (1) a director who has a conflict of interest concerning the vote or (2) a person of the director other than a person that is, or an entity controlled by, an employer of the director.

The bill defines related person as:

1. the director's spouse;
2. a child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew, (or their spouse), of the director or of the director's spouse;
3. an individual living in the director's home;
4. an entity, other than the corporation (or an entity the corporation controls), controlled by the director or anyone specified above;
and
5. a domestic or foreign (a) business or nonprofit corporation, other than the corporation or (an entity the corporation controls), of which the director is a director; (b) unincorporated entity of which the director is a general partner or a member of the governing body; or (c) individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative,

or similar fiduciary.

BACKGROUND

Business Opportunity

Connecticut courts recognize a corporation's right to sue a director for usurping a corporate opportunity. To prevail on a claim of usurpation of a corporate opportunity, a plaintiff bears the burden of establishing: (1) a fiduciary relationship between the corporation and the alleged wrongdoers and (2) the existence of a corporate opportunity (*Murphy v. Wakelee*, 247 Conn. 396, 404 (1998)).

A key issue is whether the corporate opportunity falls within the corporation's avowed business purpose. Courts consider whether (1) the business opportunity was one in which the complaining corporation had an interest or an expectancy growing out of an existing contractual right; (2) there was a close relationship between the opportunity and the corporation's business purposes and current activities; and (3) the business areas contemplated by the opportunity were readily adaptable to the corporation's existing business, in light of its fundamental knowledge, practical experience, facilities, equipment, and personnel (*Ostrowski v. Avery*, 243 Conn. 355(1997)).

Adequate disclosure of a corporate opportunity is an absolute defense to liability for alleged usurpation of such a corporate opportunity. The director must fully disclose the opportunity to the board and it must be rejected by at least a disinterested vote of the board of directors.

Corporate fiduciaries bear the burden of proving, by clear and convincing evidence, that they have not usurped a corporate opportunity. If they wish to take advantage of a safe harbor, they must establish the adequacy of their disclosures to the corporation. In the absence of such disclosures, corporate fiduciaries must prove that they did not deprive the corporation of an opportunity that it could have pursued. To determine this, courts consider whether:

1. the corporation was financially able to exploit the opportunity;

2. the opportunity was within the corporation's line of business;
3. the corporation had an interest or expectancy in the opportunity;
and
4. by taking the opportunity for his own, the corporate fiduciary
would be placed in a position inimicable to his duties to the
corporation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)